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REPORTS

NOTES OF THE WEEK

Probation Officers and Matrimonial Cases

The position of a probation officer who is concerned with possible reconciliation between the parties to a matrimonial case before a magistrates' court has been the subject of a certain number of decisions. In *Pearce* v. *Pearce* (1929) 93 J.P. 64, it was held that where a probation officer's efforts at reconciliation had been unsuccessful, that fact might properly be stated to the court. It seems clear from that case that magistrates should not go beyond that and allow themselves to be influenced by any further statement which would not be admissible as evidence.

Another matter, which has been the decision of the Court of Appeal, is the position of a probation officer who has had confidential interviews with the parties in the event of subsequent proceedings being taken. It was laid down in *McTaggart* v. *McTaggart* [1948] 2 All E.R. 754, which was followed in subsequent cases that either party can claim that communications made at such interviews are privileged.

What we believe to be the first case of its kind involving a probation officer came before Lord Merriman, P., and Wallington, J., in *Smith* v. *Smith* [1957] 2 All E.R. 397, on an appeal from a maintenance order made by justices.

It appears that the husband attended the court on the day of the hearing and saw a probation officer to whom he explained that he had urgent work and could not stay to be present at the proceedings. He also agreed that he had left his wife and said he was willing to pay her £3 a week. At the hearing of the summons, which was for desertion, the wife gave her evidence, and the probation officer also gave evidence, to the effect that the husband had admitted deserting his wife and offered £3 a week. The justices found the case proved and made an order.

On appeal, the husband filed an affidavit in the course of which he stated that he had not admitted to the probation officer that he had deserted his wife, but that he had told the probation officer, probably in answer to a question, that he had left her.

The Court held that although the probation officer had authority as agent for the husband to ask for an adjournment, he had exceeded his authority in considering himself an agent to make vital admissions on the merits of the case. Accordingly, without expressing any opinion on the merits of the case, the Court quashed the order and remitted the matter to be heard afresh by different justices.

"Admitted"

The learned Judges gave the probation officer full credit for acting honestly and from the best motives, and dealt with the point on the basis of a mistake about the scope of his authority. The use of such an expression as "he admitted desertion" can easily lead to misunderstanding. As Wallington, J., observed in the course of his judgment: "It is a very serious thing to accept an expression like 'He admitted desertion' as conclusive of an admission of any offence. Between that expression and the words which are relied on by the narrator of it there is often a great divergence. Words are by some people understood to be an admission without any reasonable excuse for so doing," and he quoted the kind of loose statements sometimes given by witnesses as admissions of adultery.

In the magistrates' courts, if a witness uses such an expression as "He admitted stealing" or "He admitted the offence" the witness is usually asked to be more explicit and to state, as far as he can remember, exactly what the defendant said. This is the only safe course whether the proceedings are criminal or matrimonial, or affiliation proceedings. It is for the court to decide what amounts to an admission.

Court Dress

There will be many people who agree with the chairman of a magistrates' court who expressed the disapproval of the bench when a defendant appeared, in answer to a summons, in his shirt-sleeves. This, the chairman said, showed want of respect, and he adjourned the case for a week in order that the man might appear with his coat on.

However much some people dislike the present slack style of dress adopted by certain other people it has to be recognized that standards have altered in this matter. For our part, we should much prefer that persons attending court should not adopt the open shirt or discard the jacket, but to decline to hear a case because of this kind of dress is a matter that needs careful consideration. We do not know the facts of this particular case, but an adjournment might prove inconvenient to the prosecutor and his witnesses as well as to the defendant, and all of them would lose time and perhaps money by a second attendance. We incline to the view that it is enough in such circumstances for the bench, after hearing the case, to express its disapproval of what was almost certainly an unintentional lapse from good taste which looked like want of respect. If the defendant appears as required by the summons and is dressed decently, if unconventionally, it might be difficult to justify a refusal to hear his case on the ground that he is not suitably dressed for the occasion.

School Crossing Patrols Act, 1953—Disqualifications

We have just noticed an omission in the list of offences for which disqualification and endorsement can be ordered which is set out at the end of the article at 120 J.P.N. 785, and subsequently reprinted in pamphlet form. In dealing with the School Crossing Patrols Act, 1953, we made no reference to s. 2 (4) of that Act which reads as follows: "the power conferred by para. (*a*) of subs. (1) of s. 6 of the Road Traffic Act, 1930, on a court before which a person is convicted of any criminal offence in connexion with the driving of a motor vehicle to order him to be disqualified for holding or obtaining a licence to drive a motor vehicle shall not be exercisable by virtue of the conviction of a person of an offence under subs. (2) of this section if it is his first or second conviction thereunder."

By s. 26 (2) of the Road Traffic Act, 1956, for the reference in s. 6 of the Act of 1930 to any criminal offence in connexion with the driving of a motor vehicle there is substituted a reference to the offences specified in sch. 4 to the Act of 1956, but this leaves untouched the restriction in s. 2 (4), *supra,* which prevents disqualification being ordered in the case of a second or subsequent conviction.

In the list referred to at the beginning of this article the entry under "disqualification" against "School Crossing Patrols Act, 1953, s. 2," should read, "Optional on third or subsequent conviction, *not* for first or second (School Crossing Patrols Act, 1952, s. 2 (4))" and we ask readers who make use of this list to amend their lists accordingly.

Drivers With no Sense of Responsibility

It is reasonable to suppose that by the time he reaches the age of 50 a man of any intelligence will have developed a fair sense of responsibility and will behave accordingly, but such a sense of responsibility is all too lacking in many drivers in spite of the barrage of road safety propaganda to which we are all subjected. The *Liverpool Daily Post* of June 4 contains a report that a driver convicted of an offence against s. 15 of the Road Traffic Act, 1930, is stated to have said, after his arrest at 5 *p.m.*, "I have been drinking since a quarter to twelve, pretty steady. I have had gins, and beer and whisky. It is the mixing that does it, you know."

He was fined £30, ordered to pay five guineas costs and was disqualified for driving for two years. It is to be hoped that this lesson will teach him at least that it does not pay to behave as he did, but the tragedy is that he and others who ought to know better will not appreciate that a man who drives a motor vehicle on the road has a responsibility to other road users to keep sober. Cases such as this one give point to the argument that the only safe rule for drivers is not to drink at all, because in company one drink so often leads to another and to that fatal "one for the road" which brings disaster. Those in whose company the driver is are not free from blame for they, knowing that he is driving, should refrain from encouraging him to drink and should, if necessary, remind him of his responsibilities as a driver. But perhaps this is too much to hope for, and charges of aiding and abetting in the commission of this offence are so extremely rare that the courts get no opportunity to deal with those not actually driving or in charge of the vehicle.

Obstructions and Accidents

In the *Manchester Guardian* of June 4 the chief constable of Nottingham is reported to have commented favourably on a proposal by a Nottingham tobacco firm to stagger working hours to try to alleviate traffic congestion, and he urged other industries to follow this example. He went on to speak of the inadequacy of our roads to accommodate the vastly increased traffic of today and said, "the greatest menace on the roads and the cause of most accidents are the kerbstone parkers who cause blind spots for oncoming traffic and pedestrians. There are motorists who think it cheaper to park their cars outside the office all day than to pay a guinea a week parking fee." The chief constable added that if he had adequate policemen for the purpose he could fill the courts with obstruction cases.

We think that the police are as fully aware as other people are that a complete ban on parking is neither desirable nor possible, but they have two special duties which make them acutely aware of the problems which unreasonable parking causes in that they have to try to keep traffic flowing and they have to investigate and seek to ascertain the causes of the accidents which occur day after day all over the country. When, therefore, a senior police officer states with a full sense of responsibility that kerbside parkers are the cause of most accidents, he must be basing this statement on information coming to him in the course of his duty. The accidents in question must of course be those occurring in a town or city, and we think that most drivers will agree that the parked vehicle does add enormously to the hazards of driving in a congested area. Yet those same drivers, when it suits them, join the ranks of the "parkers" and all too few of them take any trouble to try to avoid adding to the confusion.

The chief constable's comments leave one thought with us. What would the courts do if the police could bring before them anything like the full number of cases in which serious, and not merely minor obstruction, is caused?

Proof of Failure to Produce Driving Licence or Insurance Certificate

We think that there is at times some misunderstanding of the effect of the provisos to ss. 4 (5) and 40 (2) of the Road Traffic Act, 1930. The former

subsection enacts that any person driving a motor vehicle on a road shall, on being so required by a police constable, produce his licence for examination so that the constable may ascertain from it certain particulars, and if the driver fails to produce the licence in response to such a requirement he is liable to a fine not exceeding £5. Section 40 (2) makes provision for the production, in the circumstances therein stated, of a certificate of insurance and a person failing to comply with the requirements of this subsection is guilty of an offence and is liable to the penalties provided by s. 113 (2) of that Act.

To s. 4 (5) and to s. 40 (2) there is a proviso that if within five days after the production of the relevant document has been required, the person concerned produces that document in person at such police station as may be specified by him at the time production of the document was required, he shall not be convicted of the offence of failure to produce the document.

We have heard it suggested that in such a case the prosecution must prove not only the original failure to produce the document, but also the failure to produce it within five days at the named police station. This is not so. The offence takes place when the original failure to produce the document occurs, and when that failure is proved the prosecutor's case is complete. The proviso is something of which the defendant may take advantage if he chooses and if he is able to show that he did produce the document at the named police station within the five days. The matter is clearly within s. 81 of the Magistrates' Courts Act, 1952; "where the defendant . . . relies for his defence on any . . . proviso . . . the burden of proving the proviso . . . shall be on him."

It is important that this matter should be properly dealt with because it would place a wholly unnecessary burden and expense on the prosecution to require them to prove in every such case the failure to produce at the named police station. The burden on the defence is, in practice, negligible because if the document is produced at the named station within the five days this is notified to the station concerned with the original failure to produce and no summons is applied for. It would be only in the wholly exceptional case in which the production at the named station was not so notified to the original station that the defendant would have to prove compliance with the proviso to avoid conviction.

Juvenile Aids for the Police

So much is heard about juvenile delinquency that it is a pleasant change to read of young people helping the police, and to good purpose.

Recently a little girl of nine was instrumental in securing the arrest of a suspect by noting the number of a car and reporting it to the police. This has been followed by a report in the *Newcastle Journal* of the exploit of five boys who kept their eyes open and took prompt action which led to the arrest of three men on a charge of stealing property from a refuse tip. The tip was in a quarry in which the boys played, and when they saw a van drive in and three men get out, their suspicions were aroused and they concealed themselves and kept watch. As they had no pencil they used a stone with which to scratch on cardboard the number of the van and some descriptive particulars about it. Finding at one stage that they were observed by the men, they ran away, no doubt allaying any suspicion the men might have about them, and then they resumed their observation. All this was related in court, where one of the boys said the police had asked them to keep a lookout on the quarry. If this was so, it was a wise step, for boys playing around would be far less likely to arouse uneasiness in the minds of men bent on stealing than would the presence of men who might be policemen in plain clothes.

It is evidently not in a popular radio series alone that boy detectives are to be found. These real life boy detectives did good work, and, we rather guess, must have found it rather exciting fun.

Forgery of Vouchers for Tickets for Football Match

We are always interested to hear from correspondents about action they have taken and with what result when they have put some problem to us, especially when the point raised was obviously open to reasonable difference of opinion.

We are therefore much obliged to a senior police officer who has written to us about the questions raised in P.P. 1 at p. 334, *ante*. He informs us that a prosecution was in fact undertaken in respect of this matter and was in the hands of the Director of Public Prosecutions. Summonses were issued under s. 32 (1) of the Larceny Act, 1916, against the individuals who actually obtained the tickets by the means described, and under common law for those who had attempted the offence but who had not been successful. Additional summonses under s. 8 of the Accessories and Abettors Act, 1861, were also issued. After the withdrawal of certain summonses the defendants in all the remaining summonses, who were in the main legally represented, pleaded guilty, whereupon fines were inflicted and costs ordered.

Defence counsel expressed the opinion that charges under the Forgery Act would have been equally appropriate.

We are glad to find that the views we expressed tentatively are also those of the Director of Public Prosecutions, and that they were accepted by the court as well as by defending counsel.

Was this Fact Relevant?

Many people will agree with the statement of the chairman of a bench reported in *The Western Daily Press* of June 5 that "I do not think there is a much worse thing a man can do than drive a car when he is not in a fit state to do so," but because of the seriousness of the charge of driving a motor vehicle whilst under the influence of drink it is doubly important that there should be no mention of possibly prejudicial facts not relevant to the case. This was a case in which a motorist collided with a stationary car. He pleaded guilty to the charge under s. 15 of the Road Traffic Act, 1930, and his advocate stated that he had been drinking with a colleague and had had five pints of beer, which "was rather too much." Our attention was attracted to a statement reported to have been made by the advocate for the prosecution in opening the case that "police searching his car after the accident found a full unopened bottle of whisky." This seems to us to be quite irrelevant. Would the presence of a full unopened bottle of lemonade have been similarly mentioned? It may be, of course, that the matter was mentioned as telling in the defendant's favour, the suggestion being that he might have been even more under the influence of drink had he taken advantage of the whisky which was so readily available, and that he showed commendable self-restraint in not doing so.

We do not imagine for one moment that there was any intention to introduce prejudice by this reference to the unopened bottle of whisky. It was probably a mere statement of fact, but unless it could be shown to have some bearing on the case it would seem to have been better not mentioned.

POACHING DAYS AND POACHING WAYS

By ERNEST W. PETTIFER, M.A.

(*Concluded from p.* 343, *ante*)

The Game Act of 1831, a century and a quarter old, is still the statute under which the man who trespasses on land in search or pursuit of game or rabbits in the daytime is punished today. The law of England has always preserved a marked distinction between the night poacher and the day poacher, and this is expressed in the penalties laid down under the two statutes. Under the Night Poaching Act fines are not mentioned, only imprisonment. Under the Game Act imprisonment is not mentioned, only fines. Night poachers who offered violence could be dealt with, and can still be dealt with, only on indictment. Under the Game Act day poachers to the number of five or more found on land in search of game or rabbits, one being armed with a gun, and any of them " by violence, intimidation or menaces preventing the keepers from approaching them for the purpose of requiring them to quit the land or to tell their names " may find themselves before justices who can fine them only up to £5.

But the facts of history do prove conclusively that the men who enter land or woods by night are much more dangerous than those who commit offences in the daytime. Under cover of darkness the men have a far better chance of escaping detection and recognition, and they are prepared to go to greater lengths to get away than the man who, using purse nets and ferret, sees the keeper coming along. On the other hand, of course, the heavier sentences which await the night poacher may be an additional incentive to him to resist and escape at any cost.

The prohibitions contained in the Game Act, in addition to the simple game trespass, punishable by a fine of £2 cover sporting at unlawful seasons, that is to say, on Sunday or Christmas Day, and killing or taking partridges, pheasants or grouse between certain dates. Offenders are liable to a fine of £1 per head of game. There is no close season for hares or leverets, but some protection is given by the provision that they may not be sold or exposed for sale during the months March to July inclusive, but the penalty is only £1. Dealing in game is controlled also by the same Act, and the eggs of birds of game, as well as those of swan, wild duck, teal and widgeon, are protected by a fine of 5s. for every egg taken or destroyed. The largest fine imposed under the Act is one of £10 for putting poison, with intent to destroy or injure game, on any ground to which game usually resort, or on any highway.

The epidemic of myxomatosis, which practically wiped out the rabbit population in recent years, must have severely limited the activities of the night poachers in particular, and also of the day poachers with regard to rabbits. The rabbit is reappearing almost everywhere but, so far, in numbers too small to repay the use of the long net, and, a further disadvantage from the poacher's point of view, the disease led to the disappearance of the rabbit from markets and shops, for former purchasers simply would not look at them as an article of food. For the same reason the well-known methods of taking rabbits in the daytime will have fallen into disuse, if only temporarily. The day poacher, for instance, formerly used purse-nets and a ferret. The mouth of the purse-net (a net shaped like a long narrow bag) was secured over the hole. When all but one of the holes in the burrow had been either covered in this way or stopped up, the ferret was put down the remaining hole. As it worked its way through the passages underground the rabbits sought escape into the open air and became entangled in the nets. The watching poacher, on seeing the net threshing about, then dealt with the captured rabbit.

One experienced poacher had a clever dog, of mongrel breed, which he had trained to " point " if a rabbit entered a net. He himself would take his ease under some adjacent cover ; when he saw his dog standing rigidly and looking at a purse-net he would hasten to the spot, remove the rabbit, replace the net and retire to take his ease until the next warning from his faithful canine assistant.

Another way of using the ferret was formerly employed, though rarely, by several men with guns. The ferret was put into the warren and the rabbits were shot as they emerged, but this was a noisy way of securing a few rabbits, and was used only on outlying fields of an estate, where there was a good view for a considerable distance all around the scene of operations, and where the keepers could not easily surprise the gunmen.

The wire snare was greatly used at one time. The chief drawback was that two visits had to be made to the snares, one to set them, and another, probably the next morning, to pick up the snares and any captured rabbits. There was always the risk that the keeper might have found the snares and be in hiding close by. Foxes and stoats, also, occasionally dealt with rabbits caught in the snares. If the early visitor had been a fox there would not be much of the rabbit left ; if a stoat, the rabbit would still be in the snare, but with the hole in the back of the neck from which the fierce little hunter had taken its fill of blood from the living victim.

The man who wanted only two or three rabbits for the stewpot at home might use the greyhound or whippet for the purpose, but this method involved too much walking for small results to please the professional poacher, and the man who indulged in this form of sport was usually an amateur—a young pithand or an out-of-work labourer. While the rabbit population has undoubtedly been greatly reduced, the number of hares on the fields has surprisingly increased. The keepers have noted this fact, and it will not be surprising if the owners of greyhounds or whippets have noted it also !

Some years ago a keeper was following a line of sportsmen who were shooting partridges on an estate. He heard shots well away to his left, and thought that one of the guns must have strayed rather too far from the party. Working in that direction he discovered that an uninvited guest had attached himself to the line of guns, and that he had already bagged a couple of partridges. Summoned later before the justices for a game trespass, the man, a collier, cheerfully admitted the truth of the story and paid his fine on the spot !

In this case, as in all cases under the Game Act of 1831, the defendant retained his gun, the justices having no power under that Act to order confiscation. When the Gun Licences Act of 1860 came into force it declared that a game trespass conviction rendered void a licence to kill game (though it is extremely doubtful whether any poacher possessing a licence to kill game has ever been brought before a court !) The Gun Licence Act of 1870 carried the matter a stage further by its provision that a game trespass rendered void a *gun licence* held by the defendant, but it failed to prohibit the taking out of another gun licence the same day if the offender thought fit to do so !

To give further point to this omission of the Game Act, 1831, to provide for confiscation of guns and other equipment used by poachers, the position under the Poaching Prevention

Act of 1862 is entirely different. Under s. 2 of that Act a constable or peace officer may stop on the highway, and search, any person whom he suspects of coming from land where he has committed a game trespass. The keeper who has surprised the poacher in his unlawful act may chase him on to the highway, but unless a police officer happens to be on the road waiting for the approaching runners, the keeper cannot invoke the aid of the Poaching Prevention Act, but the police officer can and will. Searching the suspected poacher on the spot, he may seize his gun, purse-nets, snares or other "engines used for killing or taking game" (game in this case including rabbits); issue a summons himself against the suspected offender, and, if the justices are satisfied that the case is proved, they may inflict a penalty of £5 (not £2 as under the Game Act) and order the forfeiture of guns, nets, etc.

The experienced poacher is usually well up in these little inconsistencies of the law, and knows all about confiscation. "You will be fined £2," said a chairman of a court, "and your gun will be confiscated." "Oh, no, it won't; you can't do that," said a defendant charged under the Game Act, 1831, "I want my gun back." The clerk was duly consulted by a somewhat restive bench; he advised that, although rather crudely and arbitrarily put, this was good law, and the defendant left the court in possession of his gun!

But, although the three old Acts of Parliament remain unaltered by the passage of time and in changing circumstances, the poacher is marching with the times and altering his methods. Before disease drastically thinned-off the rabbit population, the night poachers had adopted the motor car and the motor lorry as means to their unlawful ends. Large gangs of men were leaving their own districts for night operations far afield, in areas where large estates were still untouched by industrial developments. They found that it was far more profitable to charter a lorry, with a driver they could trust, muster 12 or 15 men and an ample supply of nets, and return with some hundreds of rabbits, rather than run the same risks for far smaller results in their own districts.

A veteran poacher used to tell a story of his own experiences on one of these trips. The lorry reached the chosen estate without being observed, so far as was known, and, after off-loading his customers and their gear, the driver took the lorry away to a given spot to await them. They were engaged in setting the nets when the old man had a sudden and violent attack of lumbago. His mates advised him to make his way to a nearby lane and "watch out" for them. He did so, and was sitting on a bank when he was suddenly seized by keepers. He had time only to give one stentorian bellow before a hand closed firmly over his mouth, but the gang heard, abandoned their nets and made for the lorry. None were captured, but the survivor was later lodged in the nearest police cells, and came before the justices on the morrow. He was bailed out for a week, and returned by rail to his village where his pals, delighted with his help in their escape, treated him so well that he appeared in another police court in the morning, after a tussle with a policeman, and was fined 40*s*. This was paid by his friends. He observed the conditions of his bail and dutifully returned to take his trial for night poaching. The only evidence against him was that he had been found peacefully resting by the wayside, but the justices, evidently deciding that there were other aspects of his story, passed the usual sentence of three months' imprisonment, and made the usual order as to sureties!

The motor car is used by men of a different type, often men of some substance who deliberately choose to have their sport on a distant estate at the owner's expense. This is a typical case. A policeman and a keeper hiding at a corner where a country lane emerged on to a great main road saw a large and powerful car enter the lane. Three well-dressed men alighted, and lifted from the car three whippets and three guns. Entering a field they released the dogs which put up a hare and chased it into a wood.

In the meantime the watchers had not been idle. Another keeper had arrived, and the policeman had entered the large car and driven off for the head keeper! Coming back in the car they met the three sportsmen looking for their car. They made a rush for the vehicle, but were peacefully persuaded to stay and give their names and addresses. All were from London, 180 miles away, and all were men in good positions. At the hearing the prosecuting solicitor said that, in previous years, a large car had turned into the lane, during the same week of the year, and men had been seen having their sport at the landowner's expense, but that they had escaped capture. They were bound for a race meeting and had brought their guns and dogs with them. Fines amounting to over £30 were drawn from the culprits before they left the court.

The motor-cycle is often used as a handy means of transport for two men into the countryside. Keepers were lying in a dry ditch overhung with bushes one afternoon when they heard a motor-cycle coming along the road. It stopped, and they heard a shot and saw a partridge fall. One of the men went over the hedge to retrieve it, but was seized by a keeper, while the other keepers rushed the man astride the motor-cycle. The bird had been shot with a .22 rifle with a silencer on it. Two Army kit bags were strapped to the cycle, and they contained rabbits. The keepers said that the two men had been engaged in this type of poaching for some time, but that on previous occasions they had not been near enough to capture them. The driver was fined £1 but the pillion rider, a very experienced poacher, was relieved of £5.

Even a commercial lorry may be used on occasion for illegally acquiring a partridge or pheasant. A keeper standing at the junction of a lane with a main road heard a shot from a lorry which had just passed, and which stopped a long way down the road. A man got out and disappeared over the hedge, and then returned. By this time the keeper had got his motor-cycle running and was in hot pursuit, but the lorry thundered off at a great rate, and he had a long chase, during which a pheasant was thrown from the lorry over the hedge. Eventually he overtook the vehicle which then stopped. The driver denied any knowledge of the incident, but a search of the tool box revealed many feathers and a .22 rifle. This was a case of a man of good character taking a risk for the sake of a pheasant at a time when he thought he was unobserved. The lapse cost him 40*s*.

Yorkshire poachers, of up-to-date method, have been caught after using an electric lamp as an aid in night shooting, and, it would seem, with some success. A police officer on duty on the Great North Road in the early hours of the morning stopped a light van being driven north. Two men were in the van, and one of them said that the van had been sold, and that they were taking it to Leeds. There was nothing in the van, he said, but the policeman intimated that he would like to look for himself. Underneath coats in the back of the van he found a large heap of pheasants, and on counting them later when he had more leisure he found that there were 49. All had been killed by rifle bullets.

He then went over the van more thoroughly, and found a compartment under the floor which contained many feathers, and more interesting still, a powerful spot lamp with a very long flex, and a 12-volt battery. In the cab were some rifle cartridges but no rifle. A new version of the alleged

facts was then presented to the officer by the driver—the birds were Christmas presents for their friends. The policeman suggested that they might like to give this explanation, or any other which occurred to them in the meantime, to the justices. At the court both men still adhered to the Christmas gift story, but found the bench as sceptical as the constable. Both men were fined £5, the maximum penalty which could be imposed. It is almost superfluous to add that the pheasants were confiscated, together with the other equipment. The birds fetched over £30, which was paid to the county fund. There was no definite evidence as to where the poachers had been in their search for the Christmas gifts, but the police believed that a similar van had figured in certain incidents over a hundred miles away early that night.

In case the connexion between the spot lamp and battery, and the dead birds, is not quite clear, we can reconstruct a possible story of what took place. The men concerned had reconnoitred, in all probability, a well-stocked wood towards dusk, and had noted the areas in which pheasants appeared to be settling down to roost. After dark the car would be driven into a quiet lane, or even a glade in the wood. One man would carry the battery and lamp (the latter being fitted with a switch). The other man would carry the rifle (with silencer attached), the magazine being fully charged. The roosting birds would be sighted against the sky, a flash from the searchlight would illuminate and dazzle them, and the rifleman would get in a number of shots before the birds moved. By the light of the lamp, now obscured by a hand or a scarf, the dead birds would be collected. Hurrying back to the car with the spoil, it is possible that the poachers might risk another raid on a distant part of the wood, or travel to another preserve the same night to make up their bag. Reckless, and of course absolutely reprehensible, though such proceedings might be, the use of a car gave these men a considerable advantage over keepers on foot or on cycles, and this raid was evidently successful—up to the time when they met a Yorkshire policeman far away from the scene of their activities.

Before the rabbit plague appeared, and altered the whole situation, farm tractors fitted with searchlights were coming into use at night on level land where the light would illuminate a large tract of grassland or stubble, and show up any rabbits in that area. Men with shotguns, presumably farmhands, accompanying the tractor, would have little difficulty in picking-off the rabbits. At the time when disease almost swept off the rabbits, inquiries were already being made by the police as to whether s. 6 of the Ground Game Act of 1880 might be applicable in such cases. This section prohibits persons having the right to kill ground game from using firearms for the purpose in the night hours, but the matter was shelved when the rabbits disappeared.

The light 410 gun is a popular weapon carried by those men who cycle along the quieter roads and lanes in a country district, alert for a quick shot. The gun may be one of three types—a single or a double-barrelled folding gun, or in the form of a double-barrelled pistol, a compact and useful firearm. One man, not to be deterred by the loss of his 410 gun, after meeting a policeman who knew him rather well, made a catapult, cast his own bullets, and was caught with four pheasants in his possession. He lost his catapult, but probably made another. It is difficult to head-off the professional or amateur poacher once he has become a confirmed poacher. One well-known writer on sport claims that he once saw a gypsy bring down two cock pheasants, roosting close together, one after the other, with the lash of a whip, used with great dexterity after the manner of a lassoo !

But these random recollections of the old poaching days, and the ways of the former generation of poachers, must come to an end. Keepers and poachers have grown old or have already passed on, and few justices of today hear such stories of the poaching war so often recounted to their forbears. Both keepers and their antagonists were of a tough and hardy type, and both were prepared to accept the risks of their respective callings. One final illustration of the toughness of the poacher—there was a shooting battle one wintry night, and several men on both sides received shot wounds. The gang got away with their wounded; none were captured. A poacher who took part in the battle admitted, much later, that he was wounded in the legs. One of the gang was far more seriously wounded and his pals carried him for some miles, but the alarm was given that the pursuit was on, and they had to drop the wounded man over a wall and make their own escape.

The next day two of the men returned to the spot and found that their comrade was still alive. They had brought a horse and cart, he was lifted on to the vehicle, and the three made their way to Scotland where one or other of them had friends. The story sounds almost incredible; the journey must have taken days, and there is no information as to what attention the sufferer received, but he survived. After six weeks in bed he was able to return to his home with his friends.

"WITHOUT PREJUDICE" AND CRIMINAL PROCEEDINGS

By A. H. HUDSON

The question has sometimes been raised as to what extent, if any, the "without prejudice" rule obtains in criminal proceedings.

The weight of opinion seems to be against its having any application whatsoever in the field of criminal evidence. Thus *Stephen* (*Digest of the Law of Evidence*, 12th edn., 1948, art. 21, p. 35) so states the rule as to confine it to civil cases and *Halsbury* (*Laws of England*, 3rd edn. [*Simonds*] Vol. 15, p. 408 note (*q*)) says "The rule from its nature probably has no application to criminal proceedings." In an article on the rule in 95 S.J. 215 it is stated of it "It does not apply at all to criminal proceedings." It will be noted, however, that no authority is cited for any of these propositions and there are those who are prepared to admit that the rule may have some limited operation in respect of crime. *Nokes* (*Introduction to the Law of Evidence*, 2nd edn, 1956, p. 181) is doubtful, but *Wills* (*On Evidence*, 3rd edn., 1938, p. 307) citing *Keir* v. *Leeman* (1844) 6 Q.B. 308 and *Fisher* v. *Apollinaris Co.* (1875) 10 Ch. 297 (not cases directly in point) says:—"In cases where a party wronged has a choice of civil or criminal remedy and where accordingly it is held lawful to enter into a compromise of the criminal liability, there seems no reason why admissions should not be privileged on the same principle as in purely civil cases."

It is, however, suggested that there is a further obstacle to be encountered by those who would allow of the "without prejudice" rule applying in criminal proceedings when a compromise, if it had been made, would have been valid. Even in civil proceedings the "without prejudice" rule only applies between the

original negotiating parties and not between them and third parties (*Teign Valley Co.* v. *Woodcock* (1899) *The Times*, July 22). The facts of this case were that shares in the plaintiff company stood in the defendant's name and he was sued for calls. The defendant alleged that he was a nominee for a Capt. Rising and, in support of a claim to have Capt. Rising added, he sought to put in evidence certain "without prejudice" negotiations between Capt. Rising and the Company. Darling, J., not without hesitation, admitted the negotiations, saying, according to the report:—"he had doubts whether he ought to have admitted it, (the 'without prejudice' document) but as counsel pressed it he thought it best to admit it."

Thus, though persons involved in criminal transactions of a private nature might be able lawfully to enter into "without prejudice" negotiations with a view to compromising all questions of civil and criminal liability as between themselves, and, though the negotiations would be privileged if civil proceedings resulted, if criminal proceedings were taken the contrary might be the case. The criminal proceedings would be at the suit of the Crown, the Crown being a third party so far as the negotiations might be concerned, and, if *Teign Valley* were followed, the prosecution could not be met by the plea that any admissions made in the negotiations had been made "without prejudice." Hence, even on ordinary principles the rule would not apply to criminal proceedings unless the Court was either prepared to treat the Crown's participation in a private prosecution as a mere technicality, which could be disregarded when "the personal interest of the injured party is really alone the matter in question," (per Bowen, L.J., in *Jones* v. *Merionethshire Building Society* [1892] 1 Ch. at p. 184) or to hold that the *Teign Valley* rule did not apply to criminal proceedings if the "without prejudice" rule was otherwise applicable to them.

The possibility of the Court taking such a course might perhaps be enhanced by the fact that Darling, J., appeared to have no great confidence in his ruling in *Teign Valley* and therefore the case cannot be regarded as authority of the more robust kind, but, it is submitted that, as it stands, it supplies authority for those who would completely exclude the "without prejudice" rule from the field of crime and is an obstacle to the adoption of the *Wills*' view of limited operation.

REGISTRATION AND LICENSING FEES

From time to time representations are made to the Government about the revision of certain registration and licensing fees. Most of these fees were fixed many years ago and some in fact have remained unchanged for nearly a century. *Prima facie*, therefore, because of the time during which the prescribed amounts have remained unaltered there is a case for revision. On closer examination, however, doubts appear about the wisdom of attempting individual adjustments of such fees solely to bring them into line with the changed value of money.

Fees are broadly of two kinds: the first sort were imposed chiefly for the purpose of raising revenue and the second as a contribution towards the administrative cost of some control or service. We do not propose to comment here on the special cases of fees under the Weights and Measures Acts or those taken for the registration of local land charges. The latter system is meant for the assistance and protection of individuals, who, it can be argued, should meet the registration costs, and the weights and measures inspector performs services for the trader as well as for the general public.

The licence duties which usually produce most revenue are in respect of dogs, game and guns, and the most important of these is the duty on dogs. The dog licence fee of 7*s*. 6*d*. has remained unchanged since 1878: the annual licence to kill game costing £3, the part year licence to kill and the annual gamekeeper's and dealer's licences, each costing £2, and the 10*s*. annual gun licence duty were fixed between 1860 and 1870. The produce of these licences was by s. 20 of the Local Government Act, 1888, paid into a Local Taxation Account at the Bank of England and was then paid out in the form of grants to the councils of counties and county boroughs. The power to levy the duties was transferred to these local authorities by Order in Council under s. 6 of the Finance Act, 1908.

Even in a county or county borough of the largest size the income produced by these licence duties is insignificant in relation to the total expenditure of the authority, and it would still be of little relative importance if the duties were quadrupled, which is unthinkable even in this day and age. Furthermore it must not be forgotten that in all authorities which receive an equalization grant a percentage of the income received benefits the national exchequer. The practical effect of an increase in duties would therefore be to relieve in small degree the burdens of the taxpayer and ratepayer at the expense of a minority of the community, and while there may be weaknesses in the system whereby financial capacity to pay for local services is judged by the size of the house a man lives in, the substitution in any degree of dog ownership as a criterion would be completely unjustifiable. There is of course the question of control as distinct from revenue creation. The spacious days of the squirearchy were not over when the game and gun licences were imposed, and it may be that then the control of all matters pertaining to game was regarded as of greater importance than it would be today, but neither on grounds of revenue nor control is there really anything to be said for increasing the duties: in fact a good case could be made out for their reduction or abolition.

The second class comprises a considerable number of miscellaneous fees associated with certification and registration of activities of various kinds, where at different times Parliament has decided that control in the interests of the public is necessary. Among the most important of these are the fees for registration of births, deaths and marriages. Until April 1, 1930, registrars and superintendent registrars were appointed by boards of guardians, and were remunerated solely by the fees they received. From April 1, 1930, registration duties were transferred to counties and county boroughs although the substance of power was in fact left with the Registrar General, who controls in detail the work of the registrars and superintendent registrars, all of whom hold office at his pleasure. The Registrar General has not hesitated to make clear their powerlessness to the local authorities: for example, in a circular dated June 5, 1937, he said "there is no necessity or indeed power on the part of councils to take any steps in regard to auditing or checking registration officers' accounts. Moreover the registers are not open to inspection by councils' officers." Coupled with this lack of effective control is a substantial financial liability continually growing because of increasing staff costs insufficiently offset by increases of fees. This anomalous situation clearly requires to be righted, but in our view this cannot be done by a further increase in fees.

The service should be recognized for what it in fact is, namely an agency of the Government, and full reimbursement of costs made accordingly.

There are numerous other fees for licences issued for control purposes which can be classified under broad heads. There are those dealing with certain employments, for example the registration of theatrical employers and of nurses' employment agencies. The fee for the first is £2 and was fixed in 1925: there is no renewal fee. By a delicate distinction the reason for which eludes us the fee payable by the proprietor of a nurses' employment agency on making the first application for a licence is, however, two guineas: the annual renewal fee in this case is a guinea.

Then there are the fees for licences issued to those who are providing some service for particular sections of the community. Thus the fee for registration of an adoption society is a pound, the fee for registration of disabled persons' homes or old persons' homes, or nursing homes or war charities is 5*s*. It will be remembered that in certain of these cases control involves the inspection of premises.

Licences are also required in connexion with some entertainments. For example the monthly licence for a theatre costs not more than 5*s*. and so does the licence for a cinema but in the latter case the annual maximum is a pound. Particulars of entertainers concerned with performing animals must be registered at a cost of a guinea while those concerned with betting on race tracks must pay up to £10 on application for registration and £50 for an annual licence (including the application fee). In the last case accountants and mechanicians are appointed and paid by local authorities to deal with totalisators and the costs recovered from the licence holders.

Traders of various kinds must be licensed. The annual licence or certificate fees ranging from 5*s*. for the pedlar to £15 for the moneylender. In between come refreshment house keepers at a guinea, hawkers at £2, and pawnbrokers at £7 10*s*. The fees payable by the pedlar and the pawnbroker were fixed in 1871 and 1872: the others at various dates up to 1949.

Then there are the people who deal in or hold commodities or articles which may be dangerous to the community. They include those who deal in explosives (the registration of a retail dealer's premises costs a maximum of 1*s*.) ; those who possess or deal in firearms (a firearms certificate valid for three years costs 5*s*. and the annual renewal of registration of a dealer costs him a pound) and those concerned with the sale of certain poisons (here a payment of 7*s*. 6*d*. is required for the year in which a name is first entered on the lists and 5*s*. for each subsequent year).

There are other registrations and fees in addition to the above but the examples given make it clear that uncoordinated legislation and regulation over a long period have resulted in a fine crop of anomalies and inconsistencies. Merely to adjust the existing figures by reference to an index number of the fall in money values would be illogical. It seems to us that the first decision required is as to whether fees should be continued at all: if it were agreed that they are to remain, then an attempt at co-ordination should be made and consideration given as to the number of cases in which a flat rate fee could be charged. With regard to abolition it will be appreciated that the total income derived from fees of the kind we have mentioned is relatively insignificant in amount, and that the recording and checking of the small amounts involved itself creates additional administrative expense. As to the second point the amount of the fees could be fixed by the Government after consultation with the Local Authority Associations: in a number of cases alterations of the present figures would require legislation.

"LOCAL AUTHORITIES AND THE NATIONAL TRUST"

From time to time the members of a local authority may be concerned as to the future of some historical or graceful house or some natural beauty spot in their district—perhaps there may be a proposal to demolish the house because no economic use can be found for it, or to build on the open space. Action under ss. 29 and 30 of the Town and Country Planning Act, 1947 (and s. 29 may be implemented by a district council in their own right, as well as by the local planning authority), may save an ancient building, and planning control, supplemented possibly by action under one or other of the sections of the National Parks and Access to the Countryside Act, 1949 (*e.g.*, s. 64, providing for "access agreements"), should safeguard the open space.

Nevertheless, there will be cases either where the planning authority will not agree with the district council that preservation is necessary or, more often, where mere preservation and a restriction on development is not enough. Perhaps by reason of lack of financial resources, the present owners are no longer able to maintain the property to a proper standard, and grants from the Ministry of Works on the recommendation of the Historic Buildings Council have not been forthcoming because the building is not considered of sufficient national importance ; in the case of an open space, acquisition by a public body may prove to be the best solution, but then the question of management will arise, and may cause difficulty to a local authority. There are now a number of statutory provisions on such matters (including the Historic Buildings and Ancient Monuments Act, 1953), but the National Trust Acts are not always considered in this context, partly no doubt because they rank as Local and Private Acts and are not printed in the normal Public General Acts (although they will be found in vol. 17 of *Halsbury's Statutes*).

"The National Trust for Places of Historic Interest or Natural Beauty," to give it its full title, was incorporated in 1894 "for the purposes of promoting the permanent preservation for the benefit of the nation of lands and tenements (including buildings) of beauty or historic interest and as regards lands for the preservation (so far as practicable) of their natural aspect, features and animal and plant life,"* and the main statutes affecting the Trust are the National Trust Acts of 1907, 1937, 1939 and 1953. There is no power for local authorities to become members of the Trust (*see* 1907 Act, s. 14), but the County Councils' Association (and *not* the other local authority associations) appoint a member of the Council of the Trust. There is also no power for a local authority to subscribe generally to the funds of the Trust, although the sanction of the Minister of Housing and Local Government might be forthcoming under the proviso to s. 228 (1) of the Local Government Act, 1933. There is also no provision whereby local authorities, or members of local authorities (otherwise than as private individuals) can become members or attend meetings of the Trust.

Under s. 7 (1) of the National Trust Act, 1937, a local authority† may vest land or buildings in the National Trust, subject to the consent of the Minister of Housing and Local Government,‡ and of any other Government department concerned ; under this provision a local authority may give to the Trust land or buildings which may have been acquired by the local authority under (*e.g.*), s. 38 of the Town and Country Planning Act, 1947, s. 76 of the National Parks and Access to the Countryside Act, 1949, or even part V of the Housing Act, 1936 ; the National Trust will be empowered to manage the property and regulate public access thereto, by byelaws made under ss. 32 and 33 of the 1907 Act, as extended by s. 14 of the 1939 Act.§ The Trust will not normally, however, agree to take over unendowed property, as they have insufficient financial resources for the maintenance of additional properties ; this difficulty may be overcome if the local authority are prepared to implement s. 7 (2) of the 1937 Act. Under this subsection, a local authority* may contribute (with the consent of the Minister of Housing and Local Government**) to the expenses of :

(*a*) Acquisition by the National Trust of any land or building wholly or partly within or in the neighbourhood of the district of the authority ; and

(*b*) maintenance and preservation of any land or building wholly or partly within or in the neighbourhood of the district of the authority, vested in the National Trust.

" In the neighbourhood " of the particular district, is not defined, but the phrase has obviously been included in the section to cover the case of a beauty spot which is popular among the residents of a particular urban area ; this is clearly a point on which the Minister would have to be satisfied in any case where his consent was requested under the section. In return for such contributions, the National Trust will normally agree to give representation of the local authority on any local committee set up by the Trust to manage and/or advise on the management of the particular property ; in two cases at least the mayor of the borough in which the Trust property is situate, is chairman of the local committee.

Further, under s. 31 of the National Trust Act, 1907, the Trust may " act in concert with and make any arrangements and agreements with any local authority . . . for giving effect to the objects of this Act." This section does not, however, give any substantive powers to the local authority themselves, and if there is any question of the authority holding land or themselves managing the property, even by arrangement with the Trust, the authority must use some other statutory power, such as s. 7 of the 1937 Act, s. 4 of the Physical Training and Recreation Act, 1937, ss. 19 or 20 of the Town and Country Planning Act, 1944 (as re-enacted in the Eleventh Schedule of the Town and Country Planning Act, 1947), or some section of the National Parks and Access to the Countryside Act, 1949.

One of the biggest management problems of the National Trust is that of litter ; many local authorities include in their good rule and government byelaws, a clause prohibiting the dropping of litter on or in " any open space to which the public have access for the time being," and the National Trust may make their own byelaws on the subject (*see* 1907 Act, s. 32, para. (N)), but it is quite clear that more intensive action will have to be taken in the future to stop this growing menace. In their latest report, the Trust have announced their intention of instigating proceedings under their byelaws " whenever sufficient evidence can be obtained," and it is suggested that local authorities may well decide to take similar action. The Litter Bill now before Parliament will no doubt be of assistance if it becomes law, but the mere enactment of legislation will not of itself be sufficient.

Any approach from a local authority to the Trust should be to the area agent of the Trust (of whom there are 14 in various parts of the country), or to the Secretary, at 42 Queen Anne's Gate, S.W.1. ; in addition, there are six representatives of the Trust in different areas, mostly in Southern England, including one in Wales. J.F.G.

*These general purposes were widened by s. 3 of the National Trust Act, 1937, but the above is still generally descriptive.

†*I.e.*, the council of a county, borough, urban or rural district, or of a parish.

‡This function was transferred from the Minister of Health by art. 3 (1) of S.I., 1951, No. 753.

§Holmwood Common in Surrey was so vested in the Trust by several local authorities acting in concert in 1955.

**The consent of the Minister is not necessary in the case of contributions by the London county council.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Lord Evershed, M.R., Morris and Pearce, L.JJ.)

SHEFFIELD CORPORATION *v.* TRANTER (VALUATION OFFICER)

June 5, 6, 1957

Rates—Rateable occupation—Refreshment pavilion in public park—Let by local authority to independent contractor.

CASE STATED by LANDS TRIBUNAL.

A local valuation court found that a hereditament consisting of a refreshment pavilion in a public park and let by the local authority to one D was rateable. The park was acquired in 1894 by the local authority under the provisions of the Public Health Act, 1875, on trust to permit it to be for ever used as public walks and pleasure grounds within the meaning of s. 164 of that Act. It was agreed between the parties that the park—apart from the hereditament under appeal—was not rateable within the principle of the *Brockwell Park* case (*Lambeth Overseers* v. *London County Council* (1897) 61 J.P. 580 and that the cost of maintenance of the park as a whole exceeded any income therefrom. At the pavilion no main meals were provided ; D sold ices, sandwiches, cakes, and tea at a price agreed with the corporation, his only customers being people using the park. The Lands Tribunal found that the provision of a refreshment pavilion in a public park was as essential as the provision of other amenities associated with public parks, and that the amenities provided by D did not go outside the requirements of a public park. D did nothing that the corporation would not be bound to do to provide the usual amenities expected in a park of the kind in question. The tribunal allowed the appeal. On appeal by the valuation officer to the Court of Appeal,

Held : *prima facie* a public park used as such was to be treated as being in the occupation of the public and not rateable, and that exemption was not affected by the public, for reasons connected with the management of the park, being subject to exclusion from some parts of it ; on the findings of fact by the tribunal the conduct of the refreshment pavilion was ancillary to the conduct of the park itself ; and the mere fact that the pavilion was conducted, not by a servant or agent of the council, but by a third party (who was a licensee or a tenant) did not affect its rateability.

Appeal dismissed.

Counsel : *Solicitor-General* (*Sir Harry Hylton-Foster, Q.C.*) and *Patrick Browne* for the valuation officer ; *Widdicombe* for the local authority.

Solicitors : *Solicitor of Inland Revenue ; Sharpe, Pritchard & Co.*, for town clerk, Sheffield.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

ROAD CASUALTIES, APRIL 1957

There were 53 fewer people killed on the roads of Great Britain last month than in April, 1956, although the number injured was about the same. The figures were:

Killed	352;	decrease 53
Seriously injured ...	4,871;	increase 128
Slightly injured ...	15,197;	decrease 136
Total ...	20,420;	decrease 61

The number of pedestrians killed fell by 21 and the number of motorists by 19. Motor cycling fatalities were also fewer, but the number of motor cyclists (including passengers) seriously injured increased by 157.

The Road Research Laboratory estimate that motor vehicle milcage was 4¼ *per cent.* less than in April, 1956.

Totals for the first four months of the year indicate that casualties have tended to increase among pedal cyclists and motor cyclists and to decrease among pedestrians and motorists.

COUNTY BOROUGH OF WALSALL: CHIEF CONSTABLE'S REPORT FOR 1956

There were 88 applications to join the force during 1956, and these resulted in 31 appointments, bringing the actual strength on December 31 to 155. The authorized establishment was 157. Of the 155, nine are women and it is recorded that they "continue to perform in a creditable manner their varying duties and greatly contribute to the efficient working of the force."

The 1,184 days lost through sickness or injury represented an average of 8.1 days per member. This is the lowest figure during the last five years. In 1954 the average per member was 13.01 days.

Chief constable's reports remind one of the many duties performed by the police in addition to dealing with crime in the generally accepted sense of that word. The various headings give an idea of their duties: pedlars; Explosives Acts and Orders; Diseases of Animals Acts; Firearms; Dangerous Drugs Acts; Cinematograph Act and Theatres Act and Hackney Carriages, etc. To take only one instance, 1,483 visits of inspection were made to cinemas to ensure the observance of regulations. It is noticed that at two cinemas the owners were very disinclined to do what was necessary to bring their premises up to the required standard of safety, but the work was promptly done when the chief constable informed the licensees that he would be obliged to object to the renewal of the licences. One hears that television has affected adversely the receipts of cinemas, and it may be that owners are more reluctant than they formerly were to spend money on their premises.

It is usual to read in police reports about the large number of premises left insecure by careless occupiers or owners. There were 535 such instances in Walsall during 1956, and in addition there were 13 cases in which keys were obligingly left in office doors to save a would-be thief any unnecessary trouble in breaking-in.

There was a fairly substantial increase over 1955 in the number of charges of drunkenness, 149 against 110. Figures are given for each year from 1947 onwards and 149 is the highest, with 120 in 1950 coming next. By comparison the 1947 figure was only 26. In Walsall's favour it must be said that of the 149 53 were non-residents.

There were 10 charges, resulting in nine convictions, for driving or being in charge of a motor vehicle while under the influence of drink.

There were 997 recorded indictable offences, an increase of 166 on the 1955 figures. Five hundred and fifty-seven were detected and 388 persons were prosecuted. The volume of work done by the magistrates' courts is indicated by the fact that 322 of these were tried summarily and only 66 cases were committed for trial, each of these latter involving, of course, the taking of depositions. Of the 388 persons 133 were juveniles, 33 more than in 1955. Twenty-nine of the 133 had been previously charged. A further 32 juveniles were cautioned in respect of indictable offences. The increase in crime included fairly substantial increases in breaking offences (229 and 152 being the figures for 1956 and 1955 respectively). The corresponding figures for shopbreaking were 106 and 67.

Non-indictable offences also resulted in more prosecutions during 1956, 1,731 persons being proceeded against compared with 1,552 in 1955. In addition there were 708 police cautions, including 506 for motoring offences.

The number of street accidents involving death or injury increased from 422 to 451, and there were a further 921 accidents in which no one was injured, although in 211 of them a dog or some other animal was struck or killed. Efforts to promote greater safety on the roads continue. A Walsall Courtesy Club has been established, and a road safety quiz conducted by the traffic department at the annual fete proved to be one of the best attractions there. It seems impossible that all such efforts all over the country can fail to have a noticeable effect on the accident figures in due course.

LOCAL GOVERNMENT SUPERANNUATION

Hull Corporation Telephone Undertaking designated as Public Board for interchange purposes

After consulting the local authority associations, the National and Local Government Officers' Association and other interested bodies, the Minister of Housing and Local Government has designated Hull corporation, in relation to its telephone undertaking, as a public board for the purposes of the Superannuation (Local Government and Public Boards) Interchange Rules, 1949 and 1955. The designation takes effect as from January 16, 1953. Hull is the only city in the country with its own telephone undertaking, and the designation allows employees who leave local government to enter the service of Hull telephone undertaking to preserve their superannuation rights. Similarly, those leaving the telephone undertaking to enter local government service would be able to take their pension rights with them.

DEVON PROBATION REPORT

One of the matters calling for the attention of probation committees is the number of cases that individual officers are called upon to supervize, and to see that no case load remains excessive. Sometimes a re-allocation of areas may remedy the position; sometimes additional appointments are necessary.

In the report of the Devon probation committee for 1956, it is stated that it became necessary in the case of the male officers, to increase the staff in order to reduce the very heavy duties some of them were performing. In spite of this, it has proved difficult to relieve the situation in Torquay, which is practically the only compact area in the county, but it is rightly pointed out that a somewhat higher case load for the officer concerned is not so unreasonable as in the more scattered areas. The lightening of case loads, says the report, is important, in that more time becomes available for the most important work of matrimonial advice and reconciliation which, as this report says, is often the first to suffer when an officer is unduly burdened with probation, supervision and after-care cases, and work that above all requires an unhurried and infinitely patient and time absorbing approach.

The number of inquiries made for the courts in 1956 was a record for the county, and it is noteworthy that there was no corresponding increase in the number of probation orders. It can be assumed, therefore, says the report, that reports are welcomed by the court not only in cases where probation is likely to be considered appropriate, but generally to assist the courts in their deliberations. We note the statement that inquiries are almost entirely pre-trial. While we agree that pre-trial inquiries are better than none, we adhere to our opinion that a remand, probably on bail, is much to be preferred.

As to the failures of probation the report states: "It is interesting to see that of the 44 cases which can be termed unsatisfactory by having appeared before a court again during the period of probation, the highest incidence of failure was in the 17-21 age group, the next highest (rather surprisingly) in the under 12 group, and the lowest in the 40 and over age group."

We think there is much to be said for the following suggestion: "The committee would remind justices that where a probation order with a requirement of residence in a probation home or hostel is made, the period of probation should well overlap the maximum period of residence, *e.g.*, a two or three year probation order where a requirement of residence of 12 months is made, so that the probation officer has adequate opportunity to supervise and assist the probationer over the critical period of leaving the home or hostel and settling back in his own home area."

COUNTY BOROUGH OF DEWSBURY: CHIEF CONSTABLE'S REPORT FOR 1956

The chief constable has unfortunately to report that the pay increase awarded in December, 1955, and the introduction of the 44 hour week have had no appreciable effect in the number of applications to join the force. During 1956, 24 such applications were received (the same number as in 1955) and only four were appointed. One woman constable was accepted on transfer from the West Riding constabulary. The result was that the actual strength of the force on December 31, 1956, after there had been two retirements and two resignations during the year, was 89, with an authorized establishment of 94. This latter figure gives one police officer to every 562 of the borough's population. The average for all cities and boroughs in England and Wales is one to every 545.

Indictable offences increased from 458 in 1955 to 516 in 1956. Crimes of violence and those of burglary and other breaking offences all showed increases. Two juveniles were responsible for 16 breaking offences. One hundred and three persons were prosecuted for indictable crimes. The figures for juvenile offenders of all kinds show a big reduction from 103 in 1955 to 50 in 1956, but it is somewhat remarkable that the 50 committed 75 offences compared with 74 committed by the much larger number of offenders in 1955. In 1956 an additional number of 123 juveniles were cautioned by the chief constable. He states that this is done by selected officers in the presence of the parents. The children are given advice, and in many cases parents are reminded of their responsibilities. It is stated that most parents appreciate this method of dealing with their children and that the great majority of children so dealt with do not offend again. In the chief constable's view, which we feel sure most people will share, " only happiness and security at home, *together with parents sharing and accepting full responsibility,* will reduce juvenile delinquency still further."

There is a word of praise for the work of the local attendance centre, but the opinion is expressed that it is doubtful if the time allowed is long enough to achieve as much as could be done by this form of treatment of juvenile offenders.

There was a welcome, though small, reduction in the number of accidents involving death or injury, from 171 in 1955 to 159 in 1956. Figures are given for the different types of accidents and it is estimated that 50 were caused by the faults of the drivers or riders of vehicles, 55 by pedestrians, 20 by passengers or conductors and 34 by " other causes." It is remarked that parked vehicles are a contributory cause of some accidents, and the selfishness of some motorists who will not use available " off the road " car parking facilities leads the chief constable to state that those parking in the street for long periods will be dealt with according to law. Of 38 vehicle drivers who were killed or injured during 1956 no fewer than 27 were the riders of solo motor-cycles. Of these one was killed, six were seriously injured and 20 slightly injured. The duty of parents to ensure that their children are not only trained to ride their cycles but also to understand the Highway Code is stressed. The obvious truth is repeated —it cannot be emphasized too often—that more care and patience by all classes of road users would reduce the number of accidents.

There were 72 charges of drunkenness, compared with 54 during 1955, and there were also 10 charges of driving, or being in charge of, motor vehicles while under the influence of drink, together with two charges of aiding and abetting such offences. This is an unusual form of charge. It is probably an offence that is not infrequently committed, but not very easy to prove. Of the 10 " principal " offenders eight were convicted, and these were all disqualified for driving for some period.

BERKSHIRE ESTIMATES AND PRECEPT, 1957–58

The Berkshire precept for 1957–58 at 13*s.* 2*d.* will be 1*s.* 7½*d.* in excess of the figure for the previous year.

The additional impost is necessary to provide for increased expenditure and because of the reduced product of a penny rate due to the effect of the new Rating Bill which provides for reductions of one-fifth or one-seventh in the valuation of various types of commercial property.

The committees asking for substantial increases are first and foremost education where gross expenditure has increased by 20 *per cent.* to a total of £4¼ m. and net rate-borne expenditure by £¼ m. to £1¼ m.: the outstanding cause of this rise is the large increases in teachers' salaries. The highways and bridges committee have also estimated for a 20 *per cent.* increase in gross expenditure but the estimates include £47,000 for capital expenditure on major improvements to be met from revenue and £120,000 for reconstruction of existing rural trunk roads and construction of new ones: both these items are marked in the estimates as " Additional, possible, or uncertain." The other large increase is in the estimates of the finance committee and is caused by increased provision of £49,000 for capitation payments to county districts, due to an increase in the population of the county and an increase in the amount of grant per head.

The Ministry of Housing and Local Government have advised that the amount of equalization grant which will be received by the county council during 1957–58 will be £472,000, compared with £421,000 for 1956–57.

The county council have adopted the policy of meeting a limited amount of capital expenditure direct from revenue and the capital estimates show that eight *per cent.* of the total of £1,400,000 will be financed in this way, including education capital expenditure to the maximum of the limit now allowed by the Ministry, namely the produce of a 3*d.* rate.

The advocates of extensive pay as you go urge that one advantage of their system of financing capital expenditure is to reduce the volume of loan charges which are regarded as intractable expenditure, thus leaving a greater proportion which they presumably regard as tractable. Under present day conditions this division is quite unreal of course: although there may be a small section of the remaining expenditure which is capable of reduction, by far the greater part of it, assuming the continuance of local government services at their present level, is just as intractable as loan charges. (We have only to consider the largest individual item, namely, the cost of employing teachers.) This fact is clearly demonstrated in the case of Berkshire, whose finance committee under the able chairmanship of Sir George Mowbray, Bt., were only able after consultation with the chairmen of the several committees to reduce estimated net rate-borne expenditure by £22,000.

The county precept of 13*s.* 2*d.* is practically equivalent to net rate-borne expenditure, leaving the estimated balance in hand at March 31, 1958, at £168,000.

EMPLOYMENT OF NATIONAL SERVICE MEN

For some time there has been a widespread feeling that national service man-power and the time of the national service man during his service were being wastefully used. The Army Council very wisely, therefore, set up a Committee of Inquiry composed of Sir John Wolfenden, Vice-Chancellor of Reading University, Mr. W. D. Goss and Sir Frederick Hooper, each of whom had no connexion with the Army. They were encouraged to consider all aspects of the use of national service men and to put forward whatever proposals they wished.

Among the important matters dealt with in the report of the committee which was published recently was the general design of service of these men. Special inquiry was made as to the facilities for education, both in the vocational sense and in more general ways. There was evidence that these facilities do exist, but to an extent to which their use depends on the personal interest of the commanding officer and his junior officers. But, as the committee points out, on that rests an obligation not just to provide those opportunities but to use every effort to persuade the men to avail themselves of the opportunities provided in the community and of the facilities made available by local education authorities with an eye to his proper self-advancement both in the Army and on his return to civilian life. It is urged also that the War Office must play its part by giving financial assistance towards this end.

It is noted in a memorandum by the Army Council which is appended to the report that vocational and general education is principally a problem of encouraging men to use facilities which exist. To this end the booklet " Education during national service " is to be re-published in a new and more attractive form. It will be available to all national service men in unit information rooms and will be distributed widely to schools. National service men will be encouraged further by their commanding officers to make full use of the facilities. Money is not thought to be a major limiting factor. On the importance of good public relations, to which attention was also drawn by the committee, the Army Council say a good deal of useful work is already done in the Cadet Forces and an army team of lecturers is available to give talks to schools. With the co-operation of the service and the youth employment executives and the Ministry of Labour and National Service pre-national service courses are run by many employers. It is agreed, however, that the external public relations problems discussed by the committee need to be considered further. They are therefore being thoroughly examined in the light of the committee's recommendations.

REVIEWS

Police Law. By Cecil C. H. Moriarty, C.B.E., LL.D., formerly Chief Constable of Birmingham. Fourteenth Edition. London: Butterworth & Co. (Publishers) Ltd., 88 Kingsway, W.C.2. Price 15s., postage 1s. 4d. extra.

We said in reviewing the thirteenth edition that we recommend this book with confidence that none who use it will be disappointed. That is still our opinion, and the public seem to agree with us. There were four impressions of the thirteenth edition, the last as recently as June, 1956, and now in February, 1957, comes the fourteenth edition.

The layout of the book is unchanged but the new edition has had to take in the Sexual Offences Act, 1956, the Road Traffic Act, 1956, the Pool Betting Act, 1954, and other new statutes, 22 in all. The Road Traffic Act, 1956, has meant considerable revision of the parts of the book dealing with motor traffic law.

Those who have to work in courts have frequent evidence of the excellent grasp which the ordinary police constable has of his difficult duties, complicated as they are by constant amendments of and additions to the law which he has to enforce. His training is no doubt largely responsible for this, but he must be greatly helped by a book such as *Police Law* which deals so clearly with the problems with which he is faced. The number and complexity of these problems can be judged by the fact that the fourteenth edition has 549 pages excluding the tables and the index. It is, therefore, far more than a mere pocket book.

The Law of Road Traffic. By M. R. R. Davies. Shaw & Sons, Ltd., 7–9 Fetter Lane, E.C.4. Price 37s. 6d. net.

This is the second edition. The first was published in September, 1954, and we reviewed it at 119 J.P.N. 28.

The arrangement of the new edition is the same as that of the first edition. It incorporates the provisions of the Road Traffic Act, 1956, and the relevant statutory instruments and cases. The preface to the new edition claims that the law is stated as at January 1, 1957. The author, therefore, was not able to say when certain sections of the 1956 Act would come into operation, and the reader will have to bear this in mind. This is one of the many disadvantages of bringing an Act into force piecemeal.

As we noted in our previous review this book does not pretend to cover the whole of the law relating to road vehicles. For instance, nothing is said about the speed limits for goods vehicles (although sch. 1 to the Road Traffic Act, 1930, is mentioned on p. 382) or about dual-purpose vehicles, both matters which are of interest to many drivers. Again, under "age restrictions" reference is made to s. 9 (1) and s. 9 (2) of the Road Traffic Act, 1930, but not to s. 9 (3) which restricts the right to drive heavy motor cars and certain other vehicles.

We mention these points not by way of criticism but to show that however excellent a book dealing with Road Traffic Law may be it cannot be kept within practical bounds without omissions. Although it is not so stated, the system here seems to have been to concentrate on the private car driver and his problems and not to deal, save incidentally, with the goods vehicle driver and the special provisions relating to him.

As we indicated before, the ground which is covered is well covered, and great care has been taken to give the effect of the relevant cases. We have no doubt that many practitioners and clerks to justices will find it a valuable book of reference to help them to find their way through the maze of Road Traffic Law.

Statutory Definitions of Value. By H. Howard Karslake. London: Rating and Valuation Association, 42, Broadway, S.W.1. Price 25s. post free.

This is another of the excellent handbooks published by the Rating and Valuation Association for the assistance, primarily, of its own members. The full title is "The Valuer's Digest of the Statutory Definitions of Value relating to the Ownership or Occupation of Land." We have already commented favourably upon other handbooks in the same series, and have no doubt that the present publication will be particularly valuable.

There are reasons, historical and practical, for the occurrence of different definitions of value in different Acts, although it has for a long time been recognized that a single value which could be used (for example) for rating, taxation, and compulsory purchase, would have advantages. As the law stands, it is necessary to take account of the method of calculating the value of land, when acquired by public authorities, and the methods used for taxation and rating. Then again there are the several forms of rental value in the statutes relating to landlord and tenant. There are also different methods of valuing premises used for the sale of intoxicating liquor. All these fall within the scope of the professional valuer. The present work, like others issued by the Association, is printed in such a way as to display the main purport of each enactment, and the layout of the page is such as to enable the user to pick up quickly whichever definition or description of value he requires.

The Law of Copyright. By J. P. Eddy. London: Butterworth & Co. (Publishers) Ltd. Price 35s. net.

This book is of moderate length, uniform with the Annotated Legislation Service of the same publishers, but it deals with a subject of great practical importance. Even in our own special field of local government, the advisors of local authorities are frequently obliged to consider several aspects of the law of copyright. We have, for instance, been called on by way of Practical Points to deal with issues relating to the use of copyright matter in entertainments controlled by local authorities, and even, from time to time, to advise upon the use of copyright matter by local authorities for office and administrative purposes. To the legal profession generally these questions are of even more importance than to the local government world, especially in these days of almost unlimited facility for mechanical reproduction. It is also a branch of the law which peculiarly affects relations between one country and another. It was against this background that the learned author placed the present work, which is designed to introduce the Copyright Act, 1956, to the legal world. That Act has been annotated for the purpose of the book by Mr. E. Roydhouse of Gray's Inn, and forms book II of the work. There is an appendix containing the Brussels Convention of 1948 and the Universal Copyright Convention signed at Geneva in 1952. Before these conventions could be ratified, the Act of 1956 had to make some alterations in English law.

Apart from the above mentioned legislative instruments, the greater part of the work consists of a narrative explanation of the law of copyright in this country, as it stands since revision by the new Act. Mr. Eddy has given, in the proper places, full information about the history of some controversial provisions, and also about the relation between English copyright law and the problem of services relayed in this country after being broadcast from abroad. This problem is one illustration of what is said above, upon the complications introduced into copyright law by modern inventions, but it is only one illustration of the manner in which British and foreign interests in copyright may overlap. The learned author has made this inter-relation of different countries the more clear, by summarizing in part VIII of the book the copyright law in all the major Commonwealth countries, as well as in Ireland and the United States.

The general arrangement of the book is first to explain the new Act (its detailed annotation being left to a later part of the book), and then to narrate the earlier developments of the law, with particular reference to the Berne Convention which for so many years was the most important international instrument. The Copyright Act, 1911, which held the field until the Act of 1956 was passed, is in turn explained and then there come chapters upon the rights of the British Museum, upon the operations of the Performing Right Society, and upon the special position of gramophone records and films. There are valuable explanations of what is meant by "performance in public" of copyright works, and on other matters such as the position of architects, journalists, and others whose work is necessarily exposed to the public (in default of which exposure it could not exist) as compared with the position of authors and of commissioned artistic works. Every kind of reproduction of literary, dramatic, or musical works is discussed in its proper place.

So far as we can see there is no problem in the field of copyright likely to concern our own readers, or the clients of those of them who are in private practice, which has not been foreseen.

Local Land Charges. By J. F. Garner. London: Shaw & Sons Ltd. Price 19s. 6d. net.

This is the third edition of Mr. Garner's valuable little book, upon a subject which is technical and constantly produces new problems. Most of our readers are, we suppose, regular users of the book, and will be familiar with its layout. It may, however, be briefly explained that Mr. Garner, who as a town clerk has practical experience of managing local land charges, begins

by explaining the system, and the liability of the registrar, and then discusses searches and certificates. He goes on, part by part, to explain the different types of registrable local land charge, and to consider enforceability and cancellation. There is a chapter upon the other statutory registers of local authorities, to which there may be cross-references in connexion with local land charges. One of the most constantly helpful features of the book is the alphabetical table of local land charges; the various sets of rules and statutory instruments are brought up to date in the appendices.

This has always been a workmanlike and very useful companion for the local government lawyer, and indeed for the solicitor advising private clients, and it will continue to serve this function in the new edition.

BIRTHDAY HONOURS

PRIME MINISTER'S LIST

BARONET

Willinck, The Right Honourable Henry Urmston, Q.C., for public services.

KNIGHTS BACHELOR

Cloutman, His Honour Brett Mackay, V.C., Q.C., Senior Official Referee, Supreme Court of Judicature.

ORDER OF THE BRITISH EMPIRE
CIVIL DIVISION

C.B.E.

Calderwood, Alderman J. L., chairman, Wiltshire county council.

McDougal, R. S., treasurer, Hertfordshire county council.

Wakeman, Capt. Sir Offley, chairman, Shropshire county council and chairman, County Councils Association Education Committee.

O.B.E.

Arnold, D. C. J., chief constable, Cambridgeshire constabulary.

Bew, W. J. S., clerk, Essex river board.

Mighall, Lt.-Col. H., chief constable, Southport borough police.

M.B.E.

Davis, W. E., chief superintendent, Metropolitan police force.

Hall, E. F., assistant chief constable, Surrey constabulary.

Jones, R. D., clerk, Llandudno rural district council.

Smith, J. W., chief superintendent and deputy chief constable, Preston borough police force.

Tankard, R., superintendent and deputy chief constable, Birkenhead borough police force.

BRITISH EMPIRE MEDAL
CIVIL DIVISION

Carlisle, C. F., commandant, Nottingham city special constabulary.

Moore, L., commandant, Wakefield city special constabulary.

COLONIAL OFFICE LIST
KNIGHTS BACHELOR

Bourke, Paget James, Chief Justice, Cyprus.

Holder, Frank Wilfred, Q.C., Chief Justice, British Guiana.

Shaw, Bernard Vidal, Senior Puisne Judge, Special Court, Cyprus.

Whyatt, John, Q.C., Chief Justice, Singapore.

ORDER OF THE BRITISH EMPIRE
CIVIL DIVISION

K.B.E.

Foster-Sutton, Sir Stafford William Powell, Q.C., Chief Justice of the Federation of Nigeria.

QUEEN'S POLICE MEDAL FOR DISTINGUISHED SERVICE

Wilcox, A. F., chief constable, Hertfordshire constabulary.

Gaylor, T. R., assistant chief constable, Worcestershire constabulary.

Lovell, H. T. O., assistant chief constable, Dorset constabulary.

Johnston, A., chief superintendent, West Riding constabulary.

Blewett, L. P., superintendent, Cornwall constabulary.

Hunt, W. W., superintendent (Grade I), Swansea borough police.

Hirst, C. E. H., superintendent and deputy chief constable, Stockport borough police.

Brereton, E. B., superintendent, Staffordshire constabulary.

Munt, P. E., superintendent (Grade I), Metropolitan police.

Lacey, E. E., deputy superintendent, Leicester city police.

Jamieson, J. P., deputy superintendent (Grade I), Metropolitan police.

Strath, G. S., superintendent (Grade I), Metropolitan police.

MAGISTERIAL LAW IN PRACTICE

Liverpool Daily Post. April 17, 1957

BOY AGED 12 USED KNIFE IN FIGHT

A 12 year old boy told Bootle magistrates yesterday: "I threw the knife into the canal afterwards because I realized I had done something wrong."

He pleaded guilty to unlawfully wounding a boy of 14 with a sheath knife during a fight.

Inspector T. J. McCarthy said a fight broke out between two groups of boys on Coffee House Bridge at about 7.30 p.m. on February 21. One group had been throwing peas at the others, who were across the road.

The 14 year old boy was hit by some peas thrown by the defendant. He came across and they began fighting. After being pushed to the ground the defendant got up, drew a sheath knife from his belt and attacked the 14 year old boy, causing a wound on his shoulder which had to be stitched.

The 12 year old said: "He grabbed me by the neck and pushed me to the ground. I am very sorry. I did this in anger."

The boy was described in a school report as impetuous, erratic and aggressive.

He was put on probation for two years and ordered to pay 15s. costs.

By s. 50 of the Children and Young Persons Act, 1933, "it shall be conclusively presumed that no child under the age of eight years can be guilty of any offence."

A child between the ages of eight and 14 is presumed to be incapable of criminal intent, but the presumption may be rebutted by strong evidence of a mischievous discretion (10 *Halsbury* (3rd edn.), p. 286; *Clarke Hall and Morrison on Children* (5th edn.), p. 57).

In *R.* v. *Gorrie* (1918) 98 J.P. 136, a boy aged 13 was charged with manslaughter, and Salter, J., directed the jury that the boy was under 14, and the law presumed that he was not responsible criminally, and if the prosecution sought to show that he was responsible, although under 14, they must give very clear and complete evidence of what was called "mischievous discretion."

The report of this case at Bootle shows quite clearly that the boy knew that he had acted with criminal intent.

There is an irrebuttable presumption that a boy of 14 is incapable of having carnal knowledge. He therefore cannot be convicted of rape or of any offence involving carnal knowledge. (*R.* v. *Waite* (1892) 2 Q.B. 600). Further on this point *see* 10 *Halsbury* (3rd edn.), p. 286, and *Archbold's Criminal Pleading* (33rd edn.), p. 14 and 15.

The Birmingham Post. April 3, 1957

TREASURER OF THRIFT CLUB £370 SHORT

Court Orders Repayment

A British Railway chargehand who, after receiving as honorary treasurer £572 10s. 6d. from members of a thrift club, could pay out only £202, was found guilty at Hereford Quarter Sessions yesterday of fraudulently converting £370 to his own use.

The accused, William James Armitage (36), of 25, Yazor Road, Hereford, who pleaded not guilty, was put on probation for three years. He was ordered to repay £370 at the rate of ten guineas a month.

Mr. Field Evans, prosecuting, said that in 1955 Armitage had been the thrift club secretary without any defalcations or loss. But in 1956, shortly before the payout was due, he had seen the club secretary and said he was "a bit short."

Owed Him Money

Armitage told the court that he collected funds for other clubs and that the money went all into one box. People in other clubs owed him money, and he had taken money which included the thrift club money to pay expenses; then at the end of the year the people who owed him money did not pay him back.

The chairman, Judge Langman, putting Armitage on probation said he had taken into account his previous good record and the hopeless muddle in which he had got his accounts.

In this case the defendant was put on probation at quarter sessions and ordered to pay £370 compensation.

In a case in which a probation order or an order of conditional or absolute discharge is made by a Court of Assize or a court of quarter sessions there is no limit to the amount of compensation that may be ordered, but in a case dealt with summarily there is a limit of £100.

Section 11 (2) of the Criminal Justice Act, 1948, provides that "a court on making a probation order or an order for conditional discharge or on discharging an offender absolutely under this part of this Act, may, without prejudice to its power of awarding costs against him, order the offender to pay such damages for injury or compensation for loss as the court thinks reasonable; but, in the case of an order made by a court of summary jurisdiction, the damages and compensation together shall not exceed one hundred pounds or such greater sum as may be allowed by any enactment other than this section."

The offence of fraudulent conversion contrary to s. 20 of the Larceny Act, 1916, cannot be dealt with summarily by consent under s. 19 of the Magistrates' Courts Act, 1952, if the amount of the money or the value of the property in respect of which the offence was committed exceeds £20 (para. 11 of sch. I to the Act).

PICKING AND CHOOSING

"One half of the world," remarks Jane Austen's Emma, "cannot understand the pleasures of the other." Astute as this observation may have been in Regency times, it would be difficult to miss the point today. Take the man who is a regular reader of *The Manchester Guardian, The Observer* or *The Times;* settle him in a comfortable corner with the *Daily Mirror* or *The News of the World,* and he will find himself lost, a stranger in a strange and alien world, as remote from his way of thinking as the notional denizens of Mars. Remove the habitual cinema-goer, or the patron of variety-entertainment, from the Palladium, the London Pavilion or the Coliseum to Covent Garden, Glyndebourne or Sadlers Wells, and he will be hopelessly out of his element, a fish out of water, a robin in a cage. Persuade a devotee of Renaissance art to spend an hour or two at a Wyndham Lewis exhibition; cajole a Bach-lover to pass an afternoon watching teen-age "fans" whirling ecstatically in the dervish-dance of Rock-'n-Roll—and you will never hear the last of it. What on earth, you will be asked, can they possibly see (or hear) in that sort of thing?

It is impossible, in modern society, not to notice these incompatibilities, and the antagonisms that spring up between groups of persons with differing standards of culture. Intolerance for the other man's point of view is by no means exclusively on the one side or the other. Intellectual snobbery can be as irritating as philistinism; the classification of pleasures into U and non-U may be as sterile and affected as a similar classification in regard to everyday manners and speech. The world of entertainment is, or should be, wide enough to accommodate every variety of taste, and no difficulty need arise if all men followed that counsel of perfection laid down by the common law—*sic utere tuo ut alienum non laedas.* And that maxim applies with even stronger force today, when radio and television aerials bristle aggressively on nearly every roof, and one Housewife's Choice may be her neighbour's abomination.

"Ay, there's the rub!" It was so easy for Miss Austen's heroines—the designing Emma Woodhouse, the sensible Elinor Dashwood, the sweet-natured Anne Elliot—to converse intimately, to hold their quiet musical evenings in the drawing-room, to walk and ride and enjoy their mild flirtations in the spacious mansions and well-kept pleasure-grounds where they were born and bred, scarcely quitting them except for a stay in Bath or a visit, during the Season, to Portman Square. Of their non-U neighbours they know nothing, except when some pressing emergency of poverty or sickness rendered them fit objects of charity or Good Works. With their men-folk it was much the same; the opening lines of *Persuasion* sketch, in a few deft ironical touches, the splendid isolation in which so many gentlemen of the day ensconced themselves, in complete unawareness of the social cauldron that was beginning to seethe and bubble around them:

> "Sir Walter Elliot, of Kellynch Hall, in Somersetshire, was a man who, for his own amusement, never took up any book but the *Baronetage;* there he found occupation for an idle hour and consolation for a distressed one; there his faculties were roused into admiration and respect by contemplating the limited remnants of the earliest Patents; there any unwelcome sensations arising from domestic affairs changed naturally into pity and contempt as he turned over the almost endless creations of the last century; and there, if every other leaf were powerless, he could read his own history with an interest which never failed."

Poor Sir Walter! These lines were penned in 1816; within a year Bentham (then a Bencher of Lincolns Inn) had published his *Catechism of Parliamentary Reform,* a pioneer work on the new Radicalism; and by 1820 Lord Russell and the Whigs had espoused the Reformist cause. Let us hope that the noble Baronet did not live to see the passing of the Reform Act of 1832—otherwise the shock must certainly have killed him.

There is, however, a self-centred exclusiveness not only in social but also in cultural interests and activities. In these more vulgar days there is still to be found the man who chooses to house his mind in the lofty remoteness of an ivory tower, rather than in a semi-detached villa of uniform pattern with the other two hundred in the same suburban street. But one cannot resist the impression that the cultural housing needs of the former are being sacrificed by those who design the social framework of our times. If a man prefers privacy, peace and quiet to the obtrusive noise and bustle of community-life; if he likes eighteenth-century music, classical literature and the intimacy of the Dutch School of painting rather than the anarchic atonality, the arid didacticism and the abstract formlessness of modern art; if he finds no attraction in crooners and band-leaders, parlour-games organizers, brains-trustees and radio-personalities of all kinds, why should not he, as well as the next man, be permitted to follow his bent? If he finds the B.B.C.'s Light Programme ephemeral, its televized productions adolescent, why should he be prevented from privately or publicly speaking his mind?

A.L.P.

(To be concluded)

NOTED IN PASSING

"If a man says that he will sell the black horse in the last stall in his stable and the stall is empty or there is no horse in it but only a cow, no property could pass."

(*Varley* v. *Whipp* [1900] 1 Q.B. 513 at p. 516, per Channel, J.)

per J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption Act, 1950—*Consent—Evidence.*

My justices are dealing with an application under s. 1 of the Adoption Act, 1950. The infant's mother is a married woman living apart from her husband. She has a maintenance order against him which she cannot enforce as the police have been unable to trace him to execute a warrant for his arrest. The infant's father is a man with whom the mother has recently been cohabiting. The *natural* parents' names appear on the birth certificate. The husband's consent cannot be obtained because his whereabouts are unknown; for the same reason he cannot be served with notice of the application. The mother resides 40 miles away and is in full-time employment 65 miles away. She does not wish to attend this court to give evidence to bastardize the infant, as it might affect her employment. If she made a statutory declaration before a justice of the peace as to the relevant dates, etc., could the justices accept this as evidence that her husband could not be the father of the infant, and thus enable the justices to ignore the existence of her husband? Is this a desirable practice?

If you recommend the use of statutory declarations under such circumstances, who do you suggest should be responsible for drawing them up? There are occasions when a clerk to justices has had the task of preparing an adoption application for presentation to the court and at the hearing is confronted with a new circumstance, and finds it necessary to advise the justices that the matter is not in order—it is an embarrassing situation. It is by no means uncommon for the *guardian ad litem* to seek *his* legal advice from the clerk to the justices, also!

U.D.D.N.

Answer.

Section 78 of the Magistrates' Courts Act, 1950, requires evidence before a magistrates' court to be on oath, and in the absence of express statutory authority (such as s. 41 of the Criminal Justice Act, 1948), declarations are not admissible as evidence.

The infant is presumed to be legitimate until the contrary is proved. If the mother does not attend to give evidence upon which the court is satisfied that the infant is illegitimate, and that the consent of the husband of the mother is not required, the court might dispense with his consent on the ground that he cannot be found.

The application for an adoption order is, by the rules, to be presented to the court by the applicant, and a clerk to justices who has assisted the applicant in its preparation need feel no embarrassment if he has been misled by the information he has been given.

2.—Dogs—*Dogs Act*, 1871, *s.* 2.—*Owner abroad.*

I should like to bring the following facts to your notice:

1. A woman appeared at a local magistrates' court on February 18 in answer to a summons worded as follows: "that you on the . . . at . . . were the owner of a certain dangerous dog which was not kept under proper control," contrary to s. 2 of the Dogs Act, 1871.

She was represented, and after the evidence of the complainant had been heard, the constable admitted in cross-examination that the woman, when first interviewed, had stated that the dog was in fact owned by her daughter, who had been abroad since 1955 and was expected to return some time in 1957. He then ascertained that the dog licence was in the defendant's name, and she accepted responsibility for the animal during her daughter's absence. He told her that she would be reported for summons, but he failed to include in his report the fact that she had queried ownership.

The defending solicitor then submitted that as his client was not the owner of the dog, the case should be dismissed.

The prosecutor argued that the court had before them a person who not only held the licence for the dog, but accepted responsibility for it, and they only had her word that another person, who was abroad, was in fact the owner. A person who was abroad, especially for this length of time, could not possibly have any control over a dangerous dog, and if this was a complete answer to this charge, then dangerous dogs could not be controlled by order.

There is no definition of "owner" in the Act, or reference to it in *Stone*.

The court agreed with the submission by the defence and dismissed the case, but refused an application for costs.

It is thought likely that this point has arisen many times since the passing of this Act, and that "owner" may have been defined, but I can find no authority.

Is it necessary for a summons to be issued against the owner of a dog which is alleged to be dangerous? The court may take cognizance of any complaint that a dog is dangerous and not kept under proper control, and if satisfied, may make an order for the dog to be kept by the owner under proper control, etc. If the owner is abroad for some time, should his or her name be obtained and given to the court, and the person who accepts responsibility warned of the proceedings, to give that person an opportunity of appearing on the owner's behalf, and to accept the court's decision?

If the court's interpretation is correct, this particular defence is open to anyone, who, although holding the licence and having charge of a dangerous dog, is summoned in this way. He or she could simply say, at the last moment, in court, that the animal was in fact owned by a relative abroad.

It is appreciated that in this particular case, police, but not the prosecutor, had prior knowledge of the defendant's declaration of ownership, but if those facts had been made clear, what should have been the correct procedure?

2. Another query, almost parallel, on the same subject, is now raised on a case pending here. An adult states that a dog alleged to be dangerous, is in fact owned by his son aged seven years. The obvious answer to this is that as the child is under eight years of age, the father could safely be summoned as the "owner."

GECON.

Answer.

1. This subject was dealt with in a P.P. at 105 J.P.N. 402, and in a Note of the Week at 102 J.P.N. 726. The Dogs Act, 1906, contains an extended definition of "owner," but that Act is not to be read as one with the 1871 Act. We feel, therefore, that "owner" in the latter Act means the owner of the dog and cannot be extended to include someone having control of the dog with the owner's permission. We realize that this can lead to anomalies such as the one in question, but this is a penal section and must be strictly construed. We do not think that proceedings can be taken *ex parte* against an absent owner. It would be possible to summon the mother under s. 28 of the Town Police Clauses Act, 1847, if that Act applies in the district, for suffering to be at large an unmuzzled ferocious dog. Under that section, it is the person who controls and harbours the dog who is liable. (*See Knott* v. *L.C.C.* (1934) 97 J.P. 335.)

2. We think the father could be summoned. In *North* v. *Wood* [1914] 1 K.B. 629, a civil case, a girl of 17, who paid for the dog's licence and fed the dog out of her own earnings, was held to be of sufficient age to have control over the dog, and therefore to be liable for its misdeeds. On the analogy of that case, we would suggest that a boy of seven, even if held to be the owner, was not old enough to have effective control of the dog. We would agree with what is said in the Note of the Week referred to, *supra*, that it is doubtful in the case of the pets of young children whether the parents can divest themselves entirely of responsibility.

3.—Evidence—*Civil debt proceedings—Defendant and spouse of defendant as compellable witnesses.*

A defaulter has failed to attend court on a judgment summons, and as a warrant of arrest cannot be issued it has been suggested that the defaulter's husband be summoned as a witness to give evidence as to his wages on behalf of the plaintiffs.

The husband is a casual labourer and it would be difficult to "pin point" the exact amount of his wages because of his employment with different employers; otherwise the procedure under the provisions of s. 80 of the Magistrates' Courts Act, 1952, would be complied with.

I shall be obliged if I may receive your observations.

INGLE.

Answer.

The defendant herself is a compellable witness if her evidence is material to prove her means (*see* Note of the Week at 120 J.P.N. 324). The husband is also a compellable witness if the court is satisfied that he can give material evidence.

4.—Gaming—*Small Lotteries & Gaming Act*, 1956—*Thrift clubs.*

Applications have been received from thrift clubs to be registered for the promotion of small lotteries and I should be obliged by your opinion as to whether such clubs are registrable as being within s. 2 of the Act.

I took the view that the purpose of a thrift club is for the private gain of the members and it matters not what is the purpose of the proposed lottery. The applicants think otherwise and your opinion would be appreciated.

F. SPENDTHRIFT.

Answer.

Section 1 (4) of the Act defines "society" in very wide terms. At the same time, the purposes for which the society is established and conducted are defined in s. 1 (1) and, in our opinion, none of the purposes specified would cover the activities of a thrift club. We agree with our correspondent that the purpose of a thrift club is for the private gain of its members and that the question of a lottery does not arise until the society can show that its activities come within the purposes specified in s. 1 (1) of the Act.

We would add, however, that no definite answer can be given until the matter has been tested in the High Court.

5.—Landlord and Tenant Act, 1954, s. 57; Housing Act, 1936—*Business tenancy.*

The council purchased land some years ago under the provisions of part V of the Housing Act, 1936, and they wish to exercise their powers under s. 79 of that Act to develop the land for housing purposes. On the land is a house and coal-yard which form a coal vendor's residence and business, and which are not easily separable from one another. The house and business were originally owned by the person from whom the council purchased the land, and he was permitted to remain in possession on a short term tenancy. The council now wish to obtain possession of the house and coal-yard in order that the buildings may be demolished and the development proceed. The tenancy appears to be a business tenancy as defined by part II of the Landlord and Tenant Act, 1954, and is not one of those excluded from the operation of part II of the Act by s. 43. It seems strange, however, that the special provisions contained in ss. 145 and 146 of the Housing Act, 1936, which are designed to enable a housing authority to obtain early possession of land should not apply if there is a business on it.

Your advice is requested as to whether the council may use the procedure provided for in the Housing Act, 1936, to obtain possession, or whether they must give the notice required by the Landlord and Tenant Act, 1954.

PICOLA.

Answer.

The tenancy in question is one created by the council and is not one existing when the land was purchased and subject to which it was purchased. Section 145 of Housing Act, 1936, will not therefore apply.

The provisions of s. 57 of the Landlord and Tenant Act, 1954, will apply.

6.—Local Government—*Watch committee in non-county borough—Autonomous functions.*

This borough ceased to be a separate police area by virtue of s. 1 of the Police Act, 1946, but retained its watch committee to deal with its functions under the Police, Factories, etc. (Miscellaneous Provisions) Act, 1916, and the House to House Collections Act, 1939. In the days when the watch committee exercised its police functions it was not necessary to submit the acts of the committee to the council for their approval, except as to payments to be made under part II of sch. 5 of the Municipal Corporations Act, 1882. Now that the watch committee's functions are restricted as in the first paragraph above, does the committee still have power to act without the council's approval, and has the council any power to upset the committee's decisions?

DENETH.

Answer.

It seems that the question can no longer arise under the House to House Collections Act, 1939: *see Swindon Corporation* v. *Herbert* [1941] 3 All E.R. 481; 106 J.P. 94. This decision turned, however, on the definition in the Act of 1939, which does not occur in the Act of 1916, and we think therefore that the powers of the Act of 1916 are still vested in the watch committee, which was the police authority at that date. If so, we think the committee is in this matter independent of the council—the position is not the same as when the watch committee exercises such a power as the licensing of hackney carriages, which is often delegated to them, but remains a function of the council. Section 5 of the Act of 1916 is, however, a legislative power, exercisable only with the confirmation of the Home Secretary; the practical question is what view does he take of the legal position?

7.—Magistrates—*Persons of unsound mind—Order made under Magistrates' Courts Act*, 1952—*Discharge on application of a relative.*

In a recent case this court made an order under s. 30 of the Magistrates' Courts Act, 1952, directing that a defendant be received and detained in an institution for persons of unsound mind. The section states that such an order shall have effect as if the order had been made under s. 16 of the Lunacy Act, 1890. By s. 72 (3) of the Lunacy Act, 1890 (as amended by sch. 9 to the National Health Service Act, 1946) a person of unsound mind may be discharged on the application of a relative unless the authorities certify that that person is dangerous and unfit to be discharged. In some cases this might do no harm, *e.g.*, the defendant might have stolen a box of matches, but have been sent to the institution for his own protection. In other cases, having regard to the type of offence for which the order under s. 30 was made (*e.g.*, sexual offences), it could be said that the defendant was dangerous. Is it possible, in your opinion, that a defendant dealt with under s. 30 could be discharged (possibly the next day) by an application by a relative?

AJOVA.

Answer.

There is a difference of opinion about this. In the county from which the query comes, we are told that s. 72 (3) of the Lunacy Act, 1890 (as amended by sch. 9 to the National Health Service Act, 1946) is in common use, and that every week patients deemed to have been certified under s. 16 of the Act of 1890 are discharged by relatives under s. 72 (3). The contrary view is that s. 72 (3) applies to private patients, although private patients are specifically covered by s. 72 (2). As to this, it must be admitted that subs. (3) of the section substituted for the original s. 72 by sch. 9 to the National Health Service Act, 1946, is not in terms limited to private patients. Moreover, subss. (1) and (2) deal with certain defined cases, and subs. (3) with "any other case," and it is not easy to give effect to these words, if the subsection is confined to private patients. But the old s. 72 (now entirely replaced without any enactment dealing with its heading), had a marginal heading "Discharge of Private Patient," just as the old s. 79 (which has been altered but not replaced) had a heading "Discharge of pauper on application of a relative or friend." The distinction was plainly intentional, and we doubt whether the schedule to the Act of 1946 intended to upset it. If s. 72 (3) in its new form is meant to cover all cases, there seems no reason for s. 79 to be left in force, even as amended. Its procedure seems more appropriate than that of s. 72 to the cases where the patient has been put into the mental hospital by a judicial determination, which (upon the contrary view) could at once be rendered nugatory by friends. The point is arguable, but the risks of allowing discharge by relatives (of persons sent to the institution by a court) seem so grave that there may even be a case for legislation to clear up the doubt.

8.—Town and Country Planning Act, 1954—*Refund of development payments.*

My council, before November 18, 1952, acquired several large areas of land under the powers contained in s. 73 of the Housing Act, 1936, and have now received from the Central Land Board substantial claims for the refund of development payments made by the Board under s. 52 (1) of the Town and Country Planning Act, 1954.

Endeavours have been made to establish claims for exemption under s. 52 (2) (*b*), on the ground that the interests were acquired for the purposes of development or redevelopment of each area as a whole, but the Board say that as the lands were acquired under s. 73 of the Housing Act, 1936, not being under powers conferred by a Planning Act, they cannot agree that they were acquired for that purpose within the meaning of the sub-section. Please advise whether the Board is correct in its interpretation of the section or whether there is any further information on this matter.

ARGAT.

Answer.

We were lately informed that the Association of Municipal Corporations might be taking further advice upon this problem, but our own opinion still is that the Board's contention would probably be accepted by the High Court.